

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 2
(MC2014-22)
Negotiated Service Agreement

Docket No. CP2014-37

ORDER APPROVING AMENDMENT TO PRIORITY MAIL EXPRESS, PRIORITY MAIL
& FIRST-CLASS PACKAGE SERVICE CONTRACT 2
NEGOTIATED SERVICE AGREEMENT

(Issued June 26, 2014)

I. INTRODUCTION

The Postal Service seeks to amend the Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

In Order No. 2034, the Commission approved the Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 negotiated service agreement (Existing

¹ Notice of United States Postal Service of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 2, With Portions Filed Under Seal, June 13, 2014 (Notice). The Amendment is an attachment to the Notice (Amendment).

Agreement).² On June 13, 2014, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On June 17, 2014, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 2. The Postal Service asserts that the Amendment will not affect the cost coverage of the contract and that it will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the original and amended materials filed both publicly and under seal. *Id.* at 2. Based on that review, he concludes that the Existing Agreement, as amended, should continue to satisfy the relevant provisions of title 39. *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant

² See Docket Nos. MC2014-22 and CP2014-37, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 to the Competitive Product List, March 27, 2014 (Order No. 2034).

³ Order No. 2096, Notice and Order Concerning Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 Negotiated Service Agreement, June 17, 2014.

⁴ Public Representative Comments on Request of the United States Postal Service to Amend Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 Negotiated Service Agreement, June 24, 2014 (PR Comments).

products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment modifies the price categories for which the customer's packages are eligible. Attachment A indicates that the parties agree to amend contract terms I.B, I.F and I.G of the Existing Agreement and that all other terms remain unchanged.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Other considerations. The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review. The Amendment does not alter the duration or expiration date of the Existing Agreement. The Existing Agreement, as amended, is set to expire 3 years after the initial effective date unless, among other things, either party terminates the contract with 90 days' written notice to the other party or it is renewed by mutual agreement.⁵

The Existing Agreement also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing

⁵ See Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2014 (Request), Attachment B at 3. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

Agreement expiring.⁶ During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the Amendment. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days of the termination of the Existing Agreement, as amended, the Postal Service shall file the annual (contract year) costs, volumes, and revenues, disaggregated by weight and zone or rate category associated with the amended agreement.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date as discussed in this Order.

⁶ *Id.* at 4. As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) days of the contract expiring." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

3. Within 30 days after the Existing Agreement, as amended, terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone or rate category associated with the contract.

By the Commission.

Shoshana M. Grove
Secretary